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OFFICE OF PETITIONS

In re Application of
Naitoh et al.
Application No. 10/735,935
Filed: 12-15-2003
Attorney Docket No. 04536.027001

DECISION ON PETITION

This is a decision on the petition filed January 23, 2007, to withdraw the holding of abandonment for the above-identified application.

On July 25, 2006, the Office mailed a Notice of Allowance and Fee(s) Due, which set a three-month statutory period for reply. In the absence of a timely filed response, the application was held abandoned on October 26, 2006. A Notice of Abandonment was mailed on November 29, 2006.

In the present petition, the practitioner requested that the Office withdraw the holding of abandonment due to non-receipt of the Notice of Allowance.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the Notice of Allowance, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice of Allowance was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See MPEP 711.03(c)(I)(A). For example, if a three-month period for reply was set in the non-received Office communication, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office communication must be submitted as documentary proof of non-receipt of the Office communication. The showing outlined above may not be sufficient if there are circumstances

that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail (e.g. if the practitioner has a history of not receiving Office communications).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner for applicants submitted copies of docket records where the Notice of Allowance would have been entered had it been received and docketed. The practitioner attested to the fact that a search of the file jacket and docket records indicated that the Notice of Allowance was not received. Accordingly, applicants presented the required showing under 37 CFR 1.181.

The petition under 37 CFR 1.181 is GRANTED. No petition fee is required.

The Office acknowledges applicants' request to apply the previously paid issue fee as payment for the fees required by the Notice of Allowance mailed on July 25, 2006.

This matter is being referred to the Office of Patent Publication.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

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